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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,
v.
JEROME HENDON,
Defendant and Appellant.

A135379
(San Francisco County
Super. Ct. No. 216359-02)

Defendant appeals from a judgment following his plea of guilty and imposition of sentence. Defendant's appellate counsel has not raised any issues and instead has asked this court to undertake an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Counsel has also declared in her affidavit that she notified defendant he could file a supplemental brief raising any issues he wishes to present to this court. Defendant has filed a supplemental letter brief in response. Upon independent review of the record, and defendant's letter brief, we conclude that no arguable issues are presented for review, and affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On June 24, 2011, defendant and a confederate, Lemar Wanto, committed a home invasion robbery of a residence located at 2071 Vicente, in San Francisco, occupied by Knar and Yeznig Palayan. Defendant and Wanto broke into the house, threatened the two victims with a firearm, and took their cash and jewelry. Defendant was observed on the second floor of the victims' residence when police arrived in response to a neighbor's 911 report of a burglary. He left the house through a window and fled on foot, but was apprehended in a nearby backyard by the officers. A revolver was discovered in a backyard along the path of defendant's flight. During a booking search defendant was found in possession of jewelry and currency.

Defendant entered a negotiated guilty plea on February 1, 2012. He was advised of his rights and the consequences of the plea. Defendant indicated to the trial court that he entered his plea freely and voluntarily. He pled guilty to two counts of first degree residential robbery (Pen. Code, § 211),² while armed with a firearm (former § 12022, subd. (a)(1)), and one count of inflicting injury on an elder adult likely to cause great bodily injury (§ 368, subd. (b)(1).) He also admitted a prior second degree robbery conviction enhancement allegation (§ § 667, subs. (a)(1), (d), 1170.12, subs. (b), (c)). The remaining charges against defendant were dismissed.³

Defendant was subsequently sentenced in accordance with the proposed negotiated sentence disposition to a total of 19 years in state prison: the upper term of six years for one robbery conviction; a concurrent six-year term for the second robbery conviction; a consecutive term of one year (one-third of the middle term) for the conviction of inflicting injury on an elder adult; a doubling of the sentence for the prior strike conviction; and five years for the prior serious felony conviction. He was granted

¹ Since the present appeal is taken from a guilty plea, we need only recite in the most summary fashion the facts pertinent to the underlying conviction as necessary to our limited review on appeal. The facts are taken from the reporter's transcript of the preliminary hearing.

² All further statutory references are to the Penal Code unless otherwise indicated; all references to rules are to the California Rules of Court.

³ Defendant also waived the right to be sentenced by the same judge who took his plea.

presentence sentence credits of 250 actual days and 38 conduct days, for a total of 288 days. Also imposed were a restitution victim fine of \$240, a stayed parole revocation fine of \$240, a court security fee of \$80, a criminal conviction assessment of \$60, and restitution to the victims as determined after a court hearing.

Notice of appeal was timely filed. Defendant requested a certificate of probable cause, but the record does not show that his request was granted.

DISCUSSION

Defendant's guilty plea and failure to obtain a certificate of probable cause limit the issues subject to consideration on appeal. " 'A defendant who has pleaded guilty or nolo contendere to a charge in the superior court, and who seeks to take an appeal from a judgment of conviction entered thereon' must fully comply with section 1237.5 and rule 8.304(b) of the California Rules of Court, which require that the defendant secure a certificate of probable cause in order to challenge the validity of the plea." (*People v. Puente* (2008) 165 Cal.App.4th 1143, 1149.) "A defendant may not appeal 'from a judgment of conviction upon a plea of guilty or nolo contendere,' unless he has obtained a certificate of probable cause. (§ 1237.5, subd. (b); see *People v. Buttram* (2003) 30 Cal.4th 773, 790 [134 Cal.Rptr.2d 571, 69 P.3d 420] . . . [§ 1237.5's purpose is 'to weed out frivolous and vexatious appeals from pleas of guilty or no contest, before clerical and judicial resources are wasted'].)" (*People v. Cuevas* (2008) 44 Cal.4th 374, 379.) " 'Despite this broad language, we have held that two types of issues may be raised on appeal following a guilty or nolo plea without the need for a certificate: issues relating to the validity of a search and seizure, for which an appeal is provided under [Penal Code] section 1538.5, subdivision (m), and issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed.' " (*People v. Shelton* (2006) 37 Cal.4th 759, 766, quoting *Buttram*, *supra*, at p. 780.)⁴ "Our Supreme Court has expressly disapproved the practice of applying the rule

⁴ California Rules of Court, rule 8.304(b), provides "(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court—with the notice of appeal required by (a)—the statement required by Penal Code section 1237.5 for issuance of a

loosely in order to reach issues that would otherwise be precluded.” (*Puente, supra*, at p. 1149, citing *People v. Mendez* (1999) 19 Cal.4th 1084, 1098–1099.)

We find no arguable search and seizure issues. Defendant did not make a motion to suppress evidence pursuant to section 1538.5, and the record does not reveal any search and seizure issues to be considered.

Without a certificate of probable cause defendant is not entitled to review of the validity of his plea. (*People v. Johnson* (2009) 47 Cal.4th 668, 675; *People v. Brown* (2010) 181 Cal.App.4th 356, 360–361; *People v. Cole* (2001) 88 Cal.App.4th 850, 868.) The long-established rule is that “[a] defendant must obtain a certificate of probable cause in order to appeal from the denial of a motion to withdraw a guilty plea, even though such a motion involves a proceeding that occurs *after* the guilty plea.” (*Johnson, supra*, at p. 679.) A certificate must be obtained to secure review of the failure to advise of the penal consequences of a defendant’s guilty plea, failure to advise of immigration consequences, or mistaken advisement regarding potential sentencing. (*People v. Placencia* (2011) 194 Cal.App.4th 489, 494; *People v. Robinson* (1988) 205 Cal.App.3d 280, 282–283; *People v. Pearson* (1981) 120 Cal.App.3d 782, 791.) In any event we conclude that the record does not establish any grounds to support a motion to withdraw the plea. The plea followed proper admonishment of rights, and was knowing and voluntary.

We proceed to a review of defendant’s sentence. There are no prejudicial sentencing errors. In imposing sentence, the trial court properly considered evidence in the record, including the information in the probation report. In his supplemental brief

certificate of probable cause. [¶] (2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate. [¶] (3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal ‘Inoperative,’ notify the defendant, and send a copy of the marked notice of appeal to the district appellate project. [¶] (4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on: [¶] (A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or [¶] (B) Grounds that arose after entry of the plea and do not affect the plea’s validity. [¶] (5) If the defendant’s notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).”

defendant claims that probation and placement in the Delancy Street drug treatment program is an appropriate disposition, but he was ineligible for probation due to his prior conviction. In any event, denial of probation was justified by the record and not an abuse of discretion. The total term of 19 years was appropriate and in accord with the plea agreement. The doubling of defendant's sentence and the imposition of a five-year prior conviction enhancement were justified. The trial court did not state reasons for imposition of the aggravated term on the robbery conviction, but any error was harmless given defendant's criminal history and the egregious nature of the offense. The court was also justified in imposing the fines, and victim restitution contingent on a finding of ability to pay following a hearing. No error in the calculation of a total of presentence custody credits is established.

On the record before us we find that defendant was represented by competent counsel throughout the proceedings.

After a full review of the record, we find no arguable issues. Accordingly, we affirm the judgment.

Dondero, J.

We concur:

Marchiano, P. J.

Banke, J.